

VZCZCXRO0857
RR RUEHCN RUEHGH
DE RUEHGH #0259/01 1200848
ZNR UUUUU ZZH
R 300848Z APR 07
FM AMCONSUL SHANGHAI
TO RUEHC/SECSTATE WASHDC 5765
INFO RUEHGZ/AMCONSUL GUANGZHOU 0581
RUEHSH/AMCONSUL SHENYANG 0604
RUEHIN/AIT TAIPEI 0481
RUEHCN/AMCONSUL CHENGDU 0600
RUEHHK/AMCONSUL HONG KONG 0708
RUEFHLC/DEPT OF HOMELAND SECURITY WASHINGTON DC
RHMFIUU/DEPT OF JUSTICE WASHINGTON DC
RUEATRS/DEPT OF TREASURY WASHINGTON DC
RUEHKO/AMEMBASSY TOKYO 0139
RUCPDOG/USDOC WASHINGTON DC
RHEHAAA/NSC WASHINGTON DC
RUEHBJ/AMEMBASSY BEIJING 1030
RUEHGH/AMCONSUL SHANGHAI 6158

UNCLAS SECTION 01 OF 05 SHANGHAI 000259

SIPDIS

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USTR FOR CHINA OFFICE - AWINTER, ACELICO; IPR OFFICE - RMEYERS;
AND OCG - SMCCOY
DOC FOR NATIONAL COORDINATOR FOR IPR ENFORCEMENT - CISRAEL
DOC FOR ITA - DAS KASOFF, CMCQUEEN, LRIGOLI, ESZYMANSKI
LOC/COPYRIGHT OFFICE - STEPP
USPTO FOR INT'L AFFAIRS - LBOLAND
DOJ FOR CCIPS - ASHARRIN
FBI FOR LBRYANT
DHS/ICE FOR IPR CENTER - DFAULCONER
DHS/CBP FOR IPR RIGHTS BRANCH - PPIZZECK
NSC FOR KTONG

E.O. 12958: N/A

TAGS: [ETRD](#) [KIPR](#) [EFIN](#) [EINV](#) [CH](#)

SUBJECT: SHANGHAI RELEASES 2007 IPR WHITEPAPER

REF: A. SHANGHAI 222

[B](#). 06 SHANGHAI 4172

[C](#). 06 SHANGHAI 4639

(U) Sensitive but unclassified. Not for distribution outside
USG channels.

[1](#). (SBU) Summary: The Shanghai Intellectual Property
Administration (SIPA) held its annual meeting with foreign
Consulates and Chambers of Commerce on April 24 to mark the
publication of its annual White Paper on intellectual property
(IP) protection accomplishments in 2006. With its closing down
of the notorious Xiangyang Market and other confiscations and
actions, the White Paper painted a rosy picture of Shanghai's
efforts at protecting the rights of intellectual property
holders. Shanghai continues to make inroads against IP crime,
and has increased its coordination with other cities in the
region. Nevertheless, IPR infringements remain a common part of
everyday life in Shanghai with pirated goods being sold openly
on the street and in stores throughout the city. End summary.

A Long and Arduous Task

[2](#). (SBU) The Office of the Shanghai Intellectual Property Rights
Joint Conference, chaired by SIPA Director Chen Zhixing, issued
its "White Paper of Intellectual Property Development and
Protection Status in Shanghai 2006" on April 24. To mark the
publication of its white paper, SIPA hosted its eighth annual
meeting with diplomatic missions and international chambers of
commerce located in Shanghai. Chen noted in his opening remarks
that protecting intellectual property rights (IPR) "will not

succeed without the support of the whole society. We are fully cognizant that IPR protection is a long and arduous task that is essential to promoting innovation and constructing a harmonious socialist society." SIPA provided a list of more than 100 different outreach activities it had conducted in April alone to raise society's awareness of the importance of protecting IPR.

Five Tasks and Ten Measures

13. (SBU) According to Chen, the Shanghai Municipal Government developed its "Action Guidelines for Protecting Intellectual Property Rights in Shanghai" in July 2006. One result of its action plan was a specialized campaign to "crack down on the sale of fake commodities and pirated audiovisual products." The guidelines, as laid out in the White Paper, identified "Five major tasks" and "Ten Measures." The five tasks were:

- 1) Strictly crack down on pirating activities;
- 2) Continue to crack down on infringement activities in the trademark exchange market;
- 3) Strengthen regulating efforts on key issues of patent infringement;
- 4) Intensify IP protection in the export sector; and
- 5) Reinforce IP management of exhibitions and trade shows

The ten measures were:

- 1) Set up reporting and complaint service centers;
- 2) Improve cross-regional coordinated enforcement mechanisms;

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- 3) Work out Action Plan of IP Protection for the Shanghai 2010 World Expo;
- 4) Steadily promote the use of legal software copies in enterprises;
- 5) Establish an IP protection status evaluation mechanism;
- 6) Improve the IP protection status circulation system;
- 7) Establish a regular reporting system;
- 8) Enforce the random spot checking system;
- 9) Put a responsibility system into effect; and
- 10) Stage specialized campaigns.

Shanghai Administration of Industry and Commerce

14. (SBU) Shanghai Administration of Industry and Commerce (AIC) Deputy Director Mr. Chen Xuejun highlighted the closure of the Xiangyang Market (Ref C) and the shutting down of "Xiangyang Market websites." The AIC has conducted "short-term crack downs" and "long-term campaigns" to effectively curtail the spread of fake-goods dealers. Chen said that more than 110,000 stalls were inspected for illicit goods and more than 100 counterfeit fabricating enterprises had been "eradicated." The AIC also had stepped up efforts to coordinate with the Public Security Bureau (PSB) to fight fake-goods touts on the streets.

15. (SBU) According to White Paper statistics, in 2006 the AIC detected 2217 illegal trademark-related activities, confiscated and destroyed 1.5 million fake commodities worth approximately RMB 160 million (USD 21 million), and handed nine cases over to

the courts. Of the 2217 trademark infringing cases detected, 1569 (75 percent) were foreign-related trademarks. These cases had a total value of RMB 30.72 million (USD 3.9 million). Of these, 476 were infringements on U.S. trademarks, 248 were French, 216 were Japanese, and 142 were German.

SIPA's Commodity IPR Plan for 2007

¶16. (SBU) SIPA's Chen also announced that, in 2007, Shanghai would pursue four new goals for cracking down on pirated-goods commodity markets similar to the now-closed Xiangyang Market. The Administration of Industry and Commerce would:

- 1) Classify different commodity markets in Shanghai according to the severity of their infringement activities in order to prioritize their work.
- 2) Issue a list products and brands, such as Louis Vuitton, that were against the law to sell in small commodity markets.
- 3) Involve the commodity markets landlords to create self-disciplining measures with in their leases so that shops are forced out of their lease after receiving only one warning for selling illegal goods.
- 4) Strengthen coordination with Shanghai's IPR hotline (see paragraph 15).

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Software, Audio-Visuals, Maps & 10 Textbooks

¶17. (SBU) Shanghai's Municipal Copyright Bureau investigated over 500 business units and locations, seized 130,000 pirated copies of software, and closed down "some websites." Shanghai ranked third in China for its quantity of audio and visual products destroyed, having destroyed 6.77 million pieces. In a "One-Hundred Day Anti-Piracy Campaign," 177,000 copies of pirated books and newspapers were confiscated and three cases were handed over to criminal courts.

¶18. (SBU) According to Shanghai Copyright Bureau Deputy Director Lou Rongmin, one of his department's biggest cases involved the confiscation of more than 120,000 illegal maps. The "ringleaders" were sentenced to jail terms of up to four years. This case required coordination with the PSBs in neighboring Anhui and Zhejiang Provinces where the actual printing took place.

¶19. (SBU) Lou also noted that, on behalf of U.S. publisher McGraw Hill, the Copyright Bureau had conducted investigations of photo-copy shops frequented by university students and confiscated 10 copies of pirated textbooks.

Yangtze River Delta Coordination

¶10. (SBU) SIPA Deputy Director Ms. Gao Xiaomei said that Shanghai had increased its cooperation with other Yangtze River Delta (YRD) IP protection. SIPA has developed a Joint Law Enforcement Action Plan with IP administrations in 24 cities in Jiangsu and Zhejiang Provinces. In August 2006, they held their first joint conference. In addition, they had attempted to coordinate the handling of cases and the transfer of evidence between different legal jurisdictions while exchanging information about different cases. The goal of this cooperation was to "focus energy, save costs, obtain evidence in a timely manner, and prevent infringement." Director Chen later promised to have more information in the next year about the YRD coordination, noting that the Central Government had taken a keen interest in this initiative.

Shanghai Courts "Sedulously" Address IP Infringements

¶11. (SBU) The White Paper states that, in 2006, "Shanghai courts sedulously started trial work on IP-related cases and worked hard to enhance judicial protection of IP." Shanghai courts accepted 1100 civil cases for either first or second trials. This was a new high, up from 1092 in 2005 and 851 in 2004. The Shanghai courts also touted the fact that they had accomplished "a high rate of intermediation and cancellation, a low rate of appeal, and a low rate of changed sentences following an appeal. The intermediation and cancellation rate in 2006 was 65 percent.

¶12. (SBU) The White Paper also indicated that the Shanghai courts' IP case-law and experience expanded in 2006. It says: "A batch of new-type and representative cases settled, providing trial thoughts and experiences for later, similar, cases." It cites the example of the Beijing Jingdiao Technology Company suit brought against "some company in Shanghai" for computer software infringements. This decision provided the precedent that data and file format of output by computer software is not part of the computer software so that the software's copyright

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did not apply.

¶13. (SBU) The White Paper also noted that the settlement of high-profile international cases brought by such firms as Starbucks, Louis-Vuitton, and Synopsys, "established a good image of Shanghai providing timely and effective IP protection according to law."

Making Sure It's Not in the Mail

¶14. (SBU) Shanghai Customs Enforcement Department Head Wu Huading highlighted its special campaign to crack down on the export of pirated goods through China Post. Wu said that Customs had detected 190 cases worth RMB 180 million (USD 23 million). This was a 205 percent increase over 2005. He attributed this success to the implementation of new risk management techniques for IP protection that had been directly responsible for more than 50 percent of its cases. Shanghai Customs was also increasing its outreach to other customs administrative levels in the YRD area, including Nanjing and Ningbo.

Shanghai's Hotline for IPR Complaints

¶15. (SBU) Since its establishment in July 2006, Shanghai's Reporting and Complaint Service Center for IPR Protection's hotline received 9305 calls, and accepted 58 complaints. Of these 58 complaints, 49 cases had been settled. Complainants call the center by dialing a special number, 12312. The center operates on what it has styled an "X+182 coordination mode." "X" stands for the IP holder, "1" stands for the service center under the Municipal AIC, "8" stands for the eight administrative enforcement departments responsible for investigation, and "2" for the Municipal Office of Rectification and Standardization of Market Economic Order and the IP Joint Meeting Office, which together coordinate and handle the reported cases.

Despite Success, Still a Sore Subject

¶16. (SBU) The Consul General inquired about what Shanghai was doing to proactively increase IP protection for the many research and development institutions in Shanghai and noted that many had expressed reservations to him about their IP rights. SIPA's Chen said that the concentration of R&D centers in

Shanghai was perhaps the best testament to Shanghai's IPR climate. He welcomed suggestions from the audience on how to further improve and commented that IPR protection for the R&D sector should be the topic of a future seminar. Later, Copyright Bureau Deputy Director Lou alluded to the Consul General's question and, in a defensive tone, said that while his office heard lots of talk about IPR infringements, relatively few actually filed official complaints. Without an official complaint, his office was unable to open an investigation. He claimed that Shanghai's IPR protection was better than that in the United States. "We are superior to you since we have administrative measures as well as legal frameworks and whole sets of government agencies" devoted to IP protection, he said. "You have to have a concrete problem and not just express a general fear. Simply saying that your IPR might be infringed is not helpful."

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Comment

¶17. (SBU) The rollout of Shanghai's annual IPR White Paper is changing to reflect the added attention that is being paid to IPR. Opening this year's meeting not only to Consulates, but also to chambers of commerce and large foreign companies, as well as changing the format to include a slick eight-minute English language video and a panel-like discussion all lend to the appearance that Shanghai takes IPR seriously. This is a positive step forward, but in many ways appearances do not wholly reflect reality. Fake goods continue to be so readily and easily available in Shanghai that it is almost impossible to walk down any commercial street in Shanghai without seeing them.

We will continue to work closely with the Shanghai government to try to address our continuing IPR concerns in Shanghai.

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